KANNAYA A/L RAJCHEMAN & ANOR.

v.

TEH SWEE ENG

HIGH COURT, PENANG
TUAN T. SELVENTHIRANATHAN JC
[CIVIL APPEAL 11-50-90]
30 NOVEMBER 1993

PRACTICE & PROCEDURE: Application to dismiss appeal from Subordinate Court to High Court - Principles applicable - No appeal where value of subject-matter RM10,000 or less except on question of law - Consideration of s. 28(1) & s. 68(1)(a) Courts of Judicature Act 1964 - Consideration of s. 11 Civil Law Act 1956 - Road accident - Claim for personal injury - Plaintiff awarded damages - Appeal by defendants - Whether value of damages RM10,000 or less - Whether in computing the value of damages interest and costs should be included - Whether appeal involved questions of fact or law.

INTERPRETATION: Courts of Judicature Act 1964 ss. 28(1), 68(1)(a) - Interest expressly excluded in computing value of subject-matter of a claim in s. 68(1)(a) - Section 28(1) silent as to interest - Whether silence in s. 28(1) indicates an intention to include interest in computing value of the subject-matter of a claim - Effect of amending s. 68(1)(a) to add words "(exclusive of interest)".

The claim of the plaintiff/respondent arose from a road accident on 13 December 1983 while she was a passenger on motorbus PK 8985 which was driven by the 1st defendant/appellant at the material time. The 2nd defendant/appellant was the registered owner of the motorbus. As a result of the negligence of the 1st appellant the respondent was thrown out of the motorbus and suffered injuries for which the respondent filed proceedings at the Magistrate's Court claiming damages. The 1st appellant was found 100% liable and the respondent was awarded damages of RM9,007.50 together with interest and costs. The appellants appealed to the High Court.

The respondent applied for dismissal of the appellant's appeal with costs on the ground that the value of the subject-matter of the appeal was below RM10,000 and that the appeal involved sole questions of fact and not questions of law which excluded the appeal from the exception to s. 28(1) of the Courts of Judicature Act 1964 (CJA). The appellant's Counsel contended that reference to the value of the subject-matter in s. 28(1) of the CJA should include costs as well as interest which would take the total damages awarded to a sum in excess of RM15,000 thereby entitling the appellants to appeal. Appellant's Counsel further contended that questions of law were involved and that the learned Magistrate had misdirected herself on the law.

Held:

[1] The words "the amount in dispute or the value of the subject-matter is ten thousand ringgit or less" in s. 28(1) of the CJA **did not include** interest and costs. To interpret otherwise would be to place an unnecessary burden on a plaintiff who would have to decide in the first instance in which Court to institute proceedings and further to guess as to when his case would be disposed off and its outcome. This was because interest and costs would increase with the protraction of the proceedings at first instance itself and would only be awarded if in the end the plaintiff was successful. If he was not successful and had instituted proceedings in a higher Court, he would be burdened with having to pay higher costs. The same would apply in the case of an unsuccessful defendant sued in a Court higher than that in which he ought to have been sued. It could not have been the intention of the Legislature to compel the plaintiff to enter into a guessing game as to the ultimate outcome of his action for the purpose of deciding in which Court to institute proceedings.

[2] Section 68(1)(a) of the CJA excluded interest in the computation of the value of the subject-matter for the purposes of that section. The exclusion of interest in that section was introduced by Act A670 which came into force on 22 May 1987. The words "(exclusion of interest)" were added in 1987 to make the provision clearer and must be construed as having been inserted *ex abundanti cautela* having regard to the legislative history of that provision because the words "the value of the subject-matter" could not be inclusive of interest. This interpretation was fortified by s. 11 of the Civil Law Act 1956 (CLA) which empowered the Court to **include in the sum for which judgment was given** interest "...on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment." Without this provision interest would not form part of the judgment sum.

[3] Interest would only be awarded should the plaintiff succeed in his action and was not comprised in the value of the subject-matter. It was awarded only to a successful plaintiff to compensate him for having been deprived of the use of the judgment sum prior to the adjudication of the claim.

[4] All the grounds of appeal in the memorandum of appeal at best related to the application of the law to the facts and did not involve any questions of law alone. Labelling the grounds of appeal as involving questions of law did not metamorphose what were essentially questions of fact into questions of law. The substance was what mattered, not the label.

[5] A scrutiny of the learned Magistrate's grounds of judgment clearly showed that she did apply her mind to the matter and advanced cogent reasons for accepting or rejecting the evidence. Her reasons could not in any way be said to be so perverse as to justify interference by an appellate Court.

[6] The appeal was dismissed with costs. The sum lodged in Court as security for the costs of the appeal was to be paid to the respondent towards taxed costs.

[Respondent's application allowed].

Cases referred to:
Foo Sey Koh & Ors. v. Chua Seng Seng [1986] 1 MLJ 501 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 11
Courts of Judicature Act 1964, ss. 28(1), 68(1)(a)

For the appellants - N. Patkunam; M/s. N. Patkunam & Co.
For the respondent - M. Athimulan; M/s. Kumar, Sitham & Co.

JUDGMENT

T. Selventhiranathan JC:
The respondent (the plaintiff in the Court below) made this application for the appeal by the appellants (the defendants in the Court below) to be dismissed with costs on the ground that the value of the subject-matter of the appeal was below RM10,000 and that the appeal involved questions of fact only and not questions of law which therefore did not bring the appeal within the exception to s. 28(1) of the Courts of Judicature Act 1964 ("the Act"). That section provides that no appeal shall lie to the High Court from a decision of a Subordinate Court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less **except on a question of law** (emphasis added).

The affidavit in support of the application stated that the claim of the respondent arose out of an accident on 13 December 1983 while she was a passenger on motorbus PK 8985 which was driven by the first appellant and of which the second appellant was the registered owner. As a result of the negligence of the first appellant in the driving of the bus, the respondent was thrown out of the bus and suffered injuries. She filed proceedings on 8 April 1985 at the Magistrate's Court whereby she claimed damages for her injuries. The case proceeded to trial and was concluded on 24 May 1990 when the learned Magistrate found the first defendant (the first appellant) one hundred percent liable and awarded the plaintiff (the respondent) damages of RM9,007.50 together with interest and costs. As the appellants were dissatisfied with the decision of the learned Magistrate, they filed their notice of appeal on 31 May 1990.

It was further deponed in the affidavit that a perusal of the memorandum of appeal herein and the grounds of judgment of the learned Magistrate showed that the latter based her decision solely on questions of fact and that there was no question of law which arose. It was also deponed that as the judgment sum was below RM10,000 and as the appeal was in reality on questions of fact and not on questions of law, it should be dismissed with costs.

The affidavit filed on behalf of the appellants in reply was to the effect that the memorandum of appeal showed that questions of law were involved. Furthermore it was contended that the value of the subject-matter was more than RM10,000.

Encik M. Athimulan for the respondent submitted that there was no right of appeal in this case by virtue of s. 28(1) of the Act as the award of the learned Magistrate was for a sum below RM10,000. The right of appeal would only arise if a question of law was involved and it was submitted that there was no question of law alone involved in the appeal. The learned Magistrate made findings of fact which did not involve any question of law. He submitted that the motion by the respondent should be allowed with costs.

Encik N. Patkunam submitted at length on behalf of the appellants and put in copious authorities. He contended that the reference to the value of the subject-matter in s. 28(1) of the Act should include costs as well as interest which would take the total sum awarded to above RM15,000. The appellants were therefore entitled to appeal. He relied particularly on the case of *Foo Sey Koh & Ors. v. Chua Seng Seng* [1986] 1 MLJ 501. He also submitted at length to substantiate his contention that questions of law were involved and that the learned Magistrate had misdirected herself on the law.

I shall deal first with the question whether in computing the value of the subject-matter the amount of RM10,000 specified in s. 28(1) of the Act should include interest as well as costs. That section has been set out at the beginning of this judgment. But it bears repetition here *in toto*:

> 28. (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a Subordinate Court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

For the purposes of comparison of the provision in respect of appeals from the High Court to the Supreme Court, s. 68(1)(a) of the Act reads:

> 68. (1) No appeal shall be brought to the Supreme Court in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than one hundred thousand ringgit, except with the leave of the Supreme Court or a Judge of the High Court.

It will be immediately noticed that for the purpose of computing the value of the subject-matter of the claim in s. 68(1)(a) of the Act, interest is excluded whereas s. 28(1) of the Act is silent in respect of interest. It was contended on behalf of the appellants that there was therefore an intention to include interest in computing the value of the subject-matter in s. 28(1) of the Act. Reference was also made to s. 11 of the Civil Law Act 1956 which provides that in any proceedings tried in any Court for the recovery of any debt or damages the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment. (There is a proviso to s. 11 which is not applicable for our purposes).

In my view, the words "the amount in dispute or the value of the subject-matter is ten thousand ringgit or less" in s. 28(1) of the Act do not include interest and costs. To interpret otherwise would be to place an unnecessary burden on a plaintiff who will have to decide in the first instance in which Court to institute proceedings and further to guess as to when his case would be disposed of and as to its outcome. This is because interest and costs will increase with the protraction of the proceedings at first instance itself and they will only be awarded if the plaintiff is successful in the end. If he is not successful, and if he were to have instituted the proceedings in a higher Court, he will be burdened with having to pay higher costs. The same would apply in the case of an unsuccessful defendant who is sued in a Court higher than that in which he ought to have been sued, if interest and costs were included in the computation of the value of the subject-matter. It cannot have been the intention of the legislature to have enacted this provision to invite the plaintiff to first indulge in a guessing game as to the ultimate outcome of his action for the purpose of deciding in which Court to institute proceedings.

Section 68(1)(a) of the Act excludes interest in the computation of the value of the subject-matter for the purposes of that section. The exclusion of interest in that section was introduced by Act A670 which came into force on 22 May 1987. The history of that section before that amendment does not show whether interest was to be included or excluded in the computation of the value of the subject-matter of the claim. The pre-1987 amendment language of s. 68(1)(a) was very much akin to the present language of s. 28(1) insofar as reference is made to the amount in dispute or the value of the subject-matter. However, I would interpret the pre-1987 amendment s. 68(1)(a) to mean that interest is to be excluded in the computation of the value of the subject-matter. In my view, the words "(exclusive of interest)" were added in 1987 to make that provision clearer because the words "the value of the subject-matter" cannot be inclusive of interest.

Interest will only be awarded should the plaintiff succeed in his action and is not comprised in the value of the subject-matter. It is awarded only to a successful plaintiff to compensate him for being deprived of the use of the judgment sum prior to the adjudication of the claim. The words "(exclusive of interest)" in s. 68(1)(a) must be construed as having been inserted *ex abundanti cautela*, having regard to the legislative history of that provision. I am further fortified in this interpretation by s. 11 of the Civil Law Act 1956 which empowers the Court **to include in the sum for which judgment is given** (emphasis added) interest "... on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment". Without this provision, interest will not form part of the judgment sum.

Therefore, interest is not constituted or comprised in the whole or any part of the debt or damages for which judgment is given, the latter being based upon the cause of action.

I find further support for the construction of s. 28 (1) which I espouse in the following passage in the judgment of Mr. Justice Mahadev Shankar in *Foo Sey Koh* at p. 503 of the report:

> It is to be noted that the period from which the interest is to run, and the rate at which the interest is to be given, in a case such as this, is purely discretionary. To expect a plaintiff to be able to compute what the interest element is going to be, working on such imponderables, and thereby to determine in which Court he shall file his action, could not, in my respectful view, have been the intention of the law. This, therefore, is a case where the plaintiff should have initiated his action in the Sessions Court since the debt which he was suing to recover was less than RM25,000. What interest the Sessions Court would have awarded was of course entirely a matter for it upon the merits of the case.

I am afraid that the very authority the appellants relied on militates against their cause.

I also found that the second ground of objection to the appeal by learned Counsel for the respondent has merit. I have perused the memorandum of appeal in detail and compared it with the grounds of judgment of the learned Magistrate. Having done so, I am satisfied that all the grounds of appeal in the memorandum at best relate to the application of the law to the facts and do not involve any question of law alone for decision. Labelling the grounds of appeal as involving questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance is what matters, not the label.

For example, the first and second grounds of appeal read as follows:

1. The learned Magistrate erred in law when she held that the issue in the case was whether the plaintiff was standing or seated when she fell out of the bus. The learned Magistrate failed to appreciate or consider that the issue was whether the first defendant was negligent in the way he drove the bus which caused the plaintiff to fall out although she was seated in the bus as alleged by the plaintiff or whether the plaintiff was solely at fault in standing on the steps of the bus while it was negotiating the roundabout which caused her to fall out although there was no fault on the part of the first defendant as alleged by the defendants.

2. The learned Magistrate erred in law when, although she failed to hold that any particulars of negligence had been proved against the defendant, she went on to hold that, since the plaintiff was seated inside the bus when she fell out of it, the first defendant failed in his duty to the plaintiff and that, therefore, the defendants were liable to the plaintiff.

The appellants have labelled these grounds as involving questions of law but to my mind both these grounds involve questions of fact which were decided by the learned Magistrate after having heard the witnesses. Whether to accept or reject their evidence is a matter clearly within her province as long as she had valid reasons to do so. A scrutiny of her grounds of judgment clearly show that she did apply her mind to the matter and advanced cogent reasons for accepting or rejecting the evidence, and her reasons therefor cannot be in any way said to be so perverse as to justify interference by an appellate Court.

Therefore the application of the respondent for the appeal to be dismissed on the two grounds advanced, i.e. that the value of the subject-matter was less than RM10,000 and that only questions of fact and not questions of law were involved, succeeds. The appeal is dismissed with costs. The sum lodged in Court as security for the costs of the appeal is to be paid to the respondent towards taxed costs.